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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,087	01/07/2004	Yoshio Iwasaki	89285.0005	5419
26021	7590	09/08/2005	EXAMINER	
HOGAN & HARTSON L.L.P. 500 S. GRAND AVENUE SUITE 1900 LOS ANGELES, CA 90071-2611			CHEN, VIVIAN	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/753,087

Applicant(s)

IWASAKI ET AL.

Examiner

Vivian Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Specification***

1. The amendment filed 6/17/2005 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the newly added claim limitation in claim 16 regarding bag holding temperature above 20 C.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention for the reasons set forth in the objection to the Amendment filed 6/17/2005 under 35 U.S.C. 132.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 10/430,352 (allowed) in view of BAETZOLD ET AL (US 6,221,448).

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a display strip with the recited sealant layer, and packages detachable from said strip, wherein the surface of the packages are not torn or damaged when removed, the recited additional layers, etc. The features not explicitly claimed are well known or would have been obvious to one of ordinary skill in the art.

BAETZOLD ET AL discloses that it is well known in the art to use a peelable sealable composition comprising ethylene-vinylacetate containing 5-60 wt% vinylacetate and a typical melt index of 0.3-50 g/10 min and up to 75 wt% tackifier resin (e.g., a hydrocarbon or terpene resin). (line 40-55, col. 5; line 45, col. 7 to line 5, col. 9; line 45-68, col. 10).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to use conventional ethylene-vinylacetate resins as disclosed in BAETZOLD ET AL in the claimed sealing layer. It also would have been obvious to optimize the bond strength between sealant and bag, and the tensile strength of the sealant layer in order to obtain both secure attachment and clean removal.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

***Claim Rejections - 35 USC § 103***

3. Claims 1, 4-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JUNKER ET AL (US 6,481,184) in view of BAETZOLD ET AL (US 6,221,448) and ULLMANN'S ENCYCLOPEDIA OF INDUSTRIAL CHEMISTRY (ULLMANN'S).

JUNKER ET AL discloses a display strip comprising a support coated with a sealing layer contacting and adhering bags. (lines 48-63, col. 2).

BAETZOLD ET AL discloses that it is well known in the art to use a peelable sealable composition comprising ethylene-vinylacetate containing 5-60 wt% vinylacetate and a typical melt index of 0.3-50 g/10 min and up to 75 wt% tackifier resin (e.g., a hydrocarbon or terpene resin). (line 40-55, col. 5; line 45, col. 7 to line 5, col. 9; line 45-68, col. 10).

ULLMANN'S discloses that it is well known in the art to use composite structures containing combinations of biaxially oriented polyester, polyethylene, etc. in known film applications in order to optimize various physical, bonding, and/or mechanical properties (sections 6.13-7).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a known peelable composition as disclosed in BAETZOLD ET AL as the sealing layer in JUNKER ET AL in order to form a display strip that forms readily releasable seals with packages or bags. One of ordinary skill in the art would have utilized combinations of known packaging materials (e.g., polyester or polyolefin films, paper, metal foil, etc.) as disclosed in ULLMANN'S as the support for the display strip depending on the stiffness, visual properties, and other mechanical properties desired for specific applications. It also would have been obvious to optimize the bond strength between sealant and bag, and the tensile strength of the sealant layer in order to obtain both secure attachment and clean removal.

#### ***Response to Arguments***

4. Applicant's arguments filed 6/17/2005 have been fully considered but they are not persuasive.

(A) Applicant argues that the present application claim subject matter different from that claimed in copending Application 10/430,352 (allowed). However, while the subject matter of the present application is not identical to the copending Application, the features not explicitly disclosed in the primary reference are obvious modifications in view of the teachings in the secondary reference(s) and well established performance criteria for adhesive mounting and display of packages (e.g., secure attachment combined with clean removal, etc.).

(B) Applicant argues that the prior art of record fails to disclose the recited relative tear strength of the sealant layer on a display strip. However, while BAETZOLD does not explicitly discuss display strips, the reference clearly discloses sealing compositions whose bonding

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strength can be tailored to specific applications. While not explicitly discussed in JUNKER, the disadvantages of inadequate adhesion (e.g., premature detachment of packages, etc) and excessive adhesion (e.g., damage or rupture of packages during removal) are well established and readily recognizable issues in regard to display strip applications, one of ordinary skill in art would have selected a known peelable adhesive composition as disclosed in BAETZOLD in order to obtain secure, yet readily separable bonds in the display strip of JUNKER, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

(C) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., specific melt index values, the presence of a polyethylene layer, etc.) are not recited in many of the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In regard to claims specifically claiming melt index values, BAETZOLD clearly discloses typical melt index values for ethylene-vinylacetate resins used in peelable seal compositions. In regard to claims directed to the presence of a polyethylene layer, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious, as illustrated by ULLMANN'S. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In regard to claim 20, it is the Examiner's position that the disadvantages of inadequate adhesion (e.g., premature detachment of packages,

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etc) and excessive adhesion (e.g., damage or rupture of packages during removal) would be readily apparent to those of ordinary skill in the packaging art, therefore, it is reasonable to assume that one of ordinary skill in the art would utilize known materials in order to avoid such problems in order to obtain functional display and package mounting articles.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney, can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 2, 2005



Vivian Chen  
Primary Examiner  
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